



Lamoine Board of Selectmen Minutes of November 2, 2006

Chair Jo Cooper called the meeting to order at 7:05 PM

Present were: Selectmen Perry Fowler, Cynthia Donaldson, Richard Fennelly Jr., Brett Jones, S. Josephine Cooper; Administrative Assistant Stu Marckoon, Code Enforcement Officer Dennis Ford, Planning Board Members Michael Jordan, Stuart Branch, Parks Commission members Christa Brey, Kerry Galeaz, Recycling Subcommittee member Thomas Spruce, Steve Salsbury, Tim Gott and Cable TV Operator Merle Bragdon.

Agenda Review – Stu said Tom Spruce was present to talk about a recycling flyer under other business.

Minutes of October 19, 2006 – Richard, Jo and Cynthia noted some minor corrections and submitted them in writing. Perry moved to approve the minutes with the corrections. Richard 2nd. **Vote in favor was 5-0.** A brief discussion followed on the general detail of minutes.

Gott Right Of Way – Stu said the Selectmen had wanted clarification on the Right-of-Way granted to Doug Gott & Sons over the recently excavated gravel land. Jo said the board wanted to make sure things are in writing in case there are ever questions in the future. Richard asked if the right-of-way was surveyed or just something that developed over time. Steve Salsbury said it was always there, and presented a map to show where the road had been. He said the current road is not in the same spot as the old road. He said Gott didn't want to go through the landfill to access his land.

Richard asked about the access through the landfill lot. Brett asked if the landfill right of way was deeded. Mr. Salsbury said it was deeded, and the road led to several lots. Richard said he recalled the road cuts over to Blunt's Pond and Mill Road. Selectmen and Mr. Salsbury looked over the map he presented, and Mr. Salsbury pointed out several areas on the map that had to do with rights of way.

Brett asked if there would be any benefit to a long term change that would reflect the actual road. Richard asked how many years Gott has used the entrance road to Route 184 that comes out by the transfer station. Tim Gott said at least 25-years. Richard said he didn't believe Gott had a legal access easement, but if it had been used for greater than 20-years, there is a prescriptive easement that applies. He asked if it would make sense to firm up the existing access in case it comes up down the road. Perry asked if the other right-of-way followed the road, did the town put the landfill cap right in the middle of it. A discussion followed on that location of the road and the landfill cap, and who else might have rights over that right of way.

Brett asked if the board has the authority to grant permission to continue using the existing access road. Richard said he didn't think it was even necessary because the prescriptive easement applies. Brett asked how Gott accessed the back area. Mr. Gott said it was on the road that goes around; it didn't go through because it was just excavated. Richard said the access through the town lot is recently new. Brett said he was curious how this would work out. Mr. Salsbury said Doug Gott has the only deeded access. Richard said there has been access for more than 20-years by the transfer station, but less than 20-years over the rear town lot. He said the right-of-way is whatever the board thinks it is. Perry said either way they have a right-of-way, he would prefer to keep things the way they exist presently.

Brett asked if the board should formalize a right-of-way. Jo asked what the possible consequence might be. Brett said a formal agreement would make things complete, and eliminate uncertainty in the future. Richard said the Board should see if the town meeting wants to grant permission. A short discussion followed on prescriptive easements with Stuart Branch.

Cynthia asked if part of the question was to document where the right of way was located. Richard asked if the Board thought it was something the town wants to do. Jo asked what would happen if the town said no. Richard said the town can't deny the right-of-way on the transfer station lot, but it could say how Gott had to pass over the back lot. Jo asked why the town would not want them to pass over the back lot instead of the road next to the landfill cap. Brett said it makes sense to keep using the back lot. A short discussion followed on whether Gott would be willing to release the current right of way around the landfill cap. Mr. Gott said he would be agreeable to that discontinuance as long as he could go across the pit at the bottom. Further discussion followed.

Perry said it would be in the best interest of the town to change the right of way so that it's clear to everyone. Richard said it would be a win/win, where there is better access for Gott and would keep traffic off the road by the landfill cap. Jo said the way to do that would be to ask town meeting. Richard noted it's not a huge right of way; it's shorter than what exists now. Mr. Gott said it was OK with him.

Perry moved to place on the town meeting warrant a question to enter into a right of way agreement with Doug Gott & Sons, Incorporated. Jo 2nd. **Vote in favor was 5-0.** Dennis Ford suggested that there be a map for town meeting to see. Stu asked if this could also be worded in a formal deed. Mr. Salsbury said both could be accomplished. Stu noted town meeting is in early March.

Bloomfield Park Access – Stu said he got a letter from Town Attorney Tony Beardsley today via fax, and more documentation would follow. Richard read aloud the prescriptive easement section of the letter. Brett said it appears the town cannot make improvements to the road without landowner permission. A discussion with Stuart Branch followed regarding the right-of-way over the former Whitcomb piece now owned by the town.

Jo said the major question to the town attorney was maintenance. She said the bottom line appears to be that the town could maintain the right of way, but not improve it. Richard said Bangor Hydro Electric may have a line easement to the snowmobile club. Mr. Branch said that comes up from the Goodwin pit, not from Asa's Lane.

Brett said he didn't know the history and source of agitation in regard to the access road to Bloomfield Park. Mr. Branch said he's left the road the way it is because the pot holes slow the traffic down. He said if the road is smooth, the speed of traffic is unsafe. He said he does not want the road fixed and unsafe. He said there is presently no buffering from his home to the town park. He said they looked at changing access to the park and discontinuance of the piece in front of his home, and possibly put up a gate by the snowmobile club.

Richard said the offer to reroute the traffic was a decent offer. He said there are legal hurdles to clear. He said the description should be at Mr. Branch's cost, and it should not be a town cost to re-route the road. Mr. Branch read the preamble to the Parks Ordinance, and referred to the nuisance section. Mr. Fennelly said if the coming and going to the park is legal, but a nuisance to Mr. Branch, it should be up to him to plant trees for a buffer. A pointed discussion followed.

Mr. Branch said he disagreed with Mr. Fennelly. He asked if the townspeople want to use the road, why shouldn't they spend money to re-route the traffic. Jo said she would like to approach this in an open way. She asked if the town would be willing to incur expenses. She said there were DEP questions. She said she wants to be reasonable, and want to make the park as safe and enjoyable as possible. She said the park pre-dated Mr. Branch's residence there. She said there are public safety issues, and those have to be balanced. She said she was willing to explore the questions, but the town meeting would need the numbers to work with.

Dennis Ford said he would guess that 100 to 150-feet of road would need to be constructed. He said the idea was the shave a corner of the shore lot to access the park. He said this would not affect the Shoreland, as it's more than 250-feet from the shore. He said the area is lightly wooded; about a dozen trees at the most would have to be removed. He said it would be a very economical way of getting through that location.

Richard said this is not a decision the board can make; it has to come from the town. Perry said if the town wanted to repair the road, speed bumps should be involved. Brett said the board should look at comparable numbers. Jo said it would be good to have the costs to tell the town all the options. She said the park is a hiding hole, and people like it because it's out of sight. A short discussion followed on gravel pit access and gating.

Jo said she loves the park, and the parks commission has a responsibility to the public for proper access to it. She asked if there is a way to change that without changing the character of the park. Richard said there is a fair bit of legal work to be done to determine who else has a right-of-way over Bloomfield Park Road. Brett said it seems like the issues should be easily resolved. He said the cost to repair the road with speed

bumps or to build a new stretch of access should be fairly easy to determine. He said there ought to be some ideas on how to enforce off-hour traffic. A short discussion followed.

Mr. Branch said if the town has a right of way, it ought to share the plowing bill. A discussion followed on that matter. Richard suggested to Mr. Branch to propose a warrant article to have the town maintain the road. Mr. Branch said it was not his job to write warrant articles. A stern discussion followed on road plowing.

Jo said the concern is one of use of a park and someone who lives nearby bringing problems to the attention of the Board. She said the Board needs more information, in particular the cost of re-routing the road. She said it's a tough, unique situation. Mr. Branch said the town has a moral obligation on safety. Jo said when she has gone to the park with her children some unsavory people have been hanging around. She said the park is hidden, and its seclusion is the attraction, so people use the park at their own risk.

Brett said there needs to be a good faith effort to come up with a solution. Cynthia said the town needs to work with the Parks Commission. Mr. Galeaz says there are lots of variables involved. He said the parks commission has not been able to draw a conclusion on the best way to handle. He said the town has a right to maintain the road, but a responsibility to the town to work on the impact to the neighbors. He said there needs to be further discussion. He said the town has to be sure not to give up access to the area. He said the Parks Commission talked about opening up the park area a bit. He said the commission wants to work on the park's image so people don't think it's a place to hide out.

Tom Spruce asked if the fire department needs that area for fire purposes. A short discussion followed and it was concluded it probably did not. Dennis asked if the pot holes were filled in, would the town then be obligated to plow the road. Richard said if one has a legal right-of-way, it is not a town road, and does not have to be maintained. Mr. Branch said he's not so concerned in regard to plowing. He said he's just trying to be a fair neighbor.

Mr. Galeaz said it's important for everyone to say they're willing to explore the issue. He said the past could be forgotten, and the goal is to have nice access to the park. He asked if the Selectmen agreed with that summation. Cynthia and Jo said yes. Jo said she appreciates all the thinking about the issues, and she understands Mr. Branch's concerns. She said it's a public park and a lot of kids use it. She said she would hate to lose it. Mr. Galeaz said the Parks Commission needs to explore the issues, but the Selectmen need to take the lead.

Brett asked how to determine the costs. Richard suggested going to a contractor and getting a quote. Perry said he would have no trouble figuring up costs. A short discussion followed on the various options.

Brett suggested working on the Latona Spring road in order to keep that right of way viable. Perry said access and control at the park sounds good, but asked who would be responsible for that. Brett said access at the snowmobile club could be blocked. A short discussion followed in regard to access limits and types.

Stu asked if he was clear that the next step is for Perry to come up with costs for both road options. Jo said that was correct. Mr. Galeaz said there are still legal costs to acknowledge.

School Building Committee – Stu said he put copies of a preliminary design and key dates from the school building committee in the Selectmen packets. Jo said this needs to go to the school committee and noted the date of the next public forum would be November 15th. She said hearings are scheduled in December and January, with a possible referendum vote in January. She noted there were a couple of different options presented. Stu said they are preliminary only for the Board's information. Cynthia said she had some concern about the parking scheme laid out in both preliminary drawings. It was suggested those be raised at the next public forum.

Budget – Stu noted the last budget committee meeting was Monday. Brett said speeding enforcement is still lacking from the Sheriff's Department. He said he'd like to touch on law enforcement that is better than the status quo. Jo noted the town looked into that not long ago. Brett said it seems like the town is paying for something it isn't getting. There was a short discussion about buying an old police cruiser and moving it to key areas around down as a speed deterrent.

Jo said this could be put on the agenda. Brett said he's not sure he's at that point yet. He said he gets a lot of speeding complaints. A brief discussion followed on various Sheriff's Department patrol options.

Tweedie Violation – Stu reported he'd received the check for the \$2,500 fine from the Tweedies. He said they plan to move the cottage and the CEO awaits a permit application. He said he spoke with Peter Roy, the Tweedie attorney, and expects a reimbursement check for the town attorney. He said the signed consent agreement was also delivered.

Deputy Code Enforcement Officer – Jo said there had been a lot of discussion about the potential role for a Deputy CEO and a job description. She said the Selectmen wish to talk with the Planning board, and they haven't taken any steps to appoint a deputy at this point. She said there is no huge rush, but the Selectmen feel a Deputy CEO is needed, though that position needs to be well defined.

CEO Dennis Ford said the person appointed needs the same qualifications and schooling as the full CEO. He said he hoped someone would want to do it for the town, and not for their personal gain.

Cynthia asked if the CEO were away for 10-days and the Deputy found a violation and started the enforcement process, would the deputy follow that through or hand it to the CEO. Mr. Ford said he would think the deputy would follow it through, but they would work together. He said it would seem logical that the one who starts the process would finish it. Cynthia said that's one reason to continue the conversation.

Jo asked if a Planning Board member could serve as the Deputy CEO. Mr. Ford said he spoke with officials from the State Planning Office at a class he took earlier in the day, and it's not a problem. He said there are gray areas at times, but one can hold both offices, and if a conflict were to arise, the person could recuse themselves from Planning Board decisions. He said if the Selectmen hire and fire the Deputy, there is no supervisory authority from the Planning Board. Jo said an actual conflict of interest involves financial gain, and it's different from a perceived conflict. She said she wasn't sure where to draw the line. She said it is up to the individual to err on the side of caution. She said the struggle is not in regard to the individual who has applied, but in regard to the position in general. She said she didn't want to want to put someone in a position that it would be unfair to them or the town. A short discussion followed on meeting with the planning board and getting a draft inquiry and response.

Richard said a check and balance is that it would only be one seat on the Planning Board. Perry said an alternate could fill that seat if needed. Jo said she didn't want to put a lot onto one individual. Mr. Ford said part of the CEO's job is to attend the Planning Board meeting and be a resource. Cynthia said there is still a conflict of interest problem. Perry said a person acting as a CEO could relay information to the board and give the impression that they have undue influence on the board. Richard agreed that if a person has an agenda, they could manipulate the facts unfairly. Jo said the town can't control perceptions. She said a person could be honest and still accused of being dirty. She said she's uneasy about perception. A short discussion followed.

Cynthia said she still has a problem of having someone generating the rules and then being the one to enforce them. Brett said that could be effectively separated if the Deputy CEO recused himself from Planning Board action. Perry said the conflict potential he sees could be between the CEO and the Deputy CEO. Brett said if the policy is that the Deputy CEO sees through a case, that could work.

Jo said she understands Cynthia's problem. She said that can be difficult in a small town. Richard said he recognizes the perceived conflicts in all aspects of town government. A short discussion followed.

Selectmen said the next step is to get a clear job description and get Planning Board feedback for the next meeting. A short discussion followed on budget issues, paying for training time and mileage. The board agreed that at the meeting after next candidates would be interviewed and a possible appointment made.

Bangor Hydro Transmission Line – Stu said he and Cynthia attended the presentation from Bangor Hydro recently and the Conservation Commission was well represented. Cynthia said the company addressed environmental concerns well.

Expenditure Warrant 9 – Selectmen signed expenditure warrant 9 for \$803,137.52. Stu noted \$750,000 was a transfer to the investment account.

Cash & Budget Report – There were no questions about the written report.

Quitclaim Deed – Jo moved to sign a quitclaim deed transferring a mobile home owned by the town through the tax lien foreclosure process to Wesley H.A. Bentivoglio who had satisfied an installment payment for said mobile home. Perry 2nd. **Vote in favor was 5-0.**

Recycling Flyer – Tom Spruce said the recycling subcommittee of the Conservation Commission is putting out a new brochure to encourage recycling. He said it would be in the next quarterly. Stu asked if it were in electronic format. There was a short discussion about how to distribute the flyer. Jo said the flyer will be helpful, especially for new residents.

Next Meeting – The board meets next on November 16, 2006

FEMA Application – Stu said he submitted a FEMA Form 7 after the windstorms last weekend that caused some debris removal costs. He said Dennis surveyed the roads and George Crawford would be starting to remove the downed trees soon.

There being no further business, the meeting adjourned at 9:24 PM

Respectfully Submitted,

Stu Marckoon, Adm. Asst.